

New York Medical College and New York State Federation of Physicians and Dentists, affiliated with the American Federation of Teachers, AFL-CIO, Petitioner. Case 2-RC-18687

September 3, 1982

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Paul Rickard. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 2 issued an order transferring this case to the Board for decision. The Employer and the Petitioner filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, New York Medical College, herein referred to as the College or the Employer, is a not-for-profit New York State corporation whose principal office and facility are located in Valhalla, New York. It is engaged in providing medical education, research, and treatment and care of patients at Valhalla and in New York City. During the 12 months preceding the hearing, the Employer had gross revenues in excess of \$1 million, exclusive of restrictive grants, and during the period purchased goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New York. Based on the record and the foregoing stipulated facts, we find that the College is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. As indicated above, the College is located in Valhalla, New York, and operates a medical school

that offers a 4-year program at the end of which students become physicians. In addition, the College has a Graduate School of Basic Sciences and operates the Mental Retardation Institute (MRI) in Valhalla and the Center for Comprehensive Health Practice (CCHP) in Manhattan, New York City. The College is also affiliated with and provides professional staff for four hospitals; namely, Westchester County Medical Center in Valhalla, which is owned by Westchester County, Lincoln Hospital in Bronx, New York City, Metropolitan Hospital in Manhattan, New York City, and Bird S. Coler Hospital in Queens, New York City, which are owned by New York City through its Health and Hospitals Corporation.

The Petitioner seeks to represent all professional employees of the Employer who work at the foregoing facilities 8 or more hours per week, including physicians, Ph.D's, dentists, and registered nurses, but excluding interns, residents, employees represented by another labor organization, guards, and supervisors as defined in the Act.

The College contends that the Union's petition should be dismissed for the following reasons:

(1) The College professionals are predominantly faculty members in a mature institution of higher learning and as such are managerial employees who cannot properly be included in the proposed unit under the criteria set forth by the Supreme Court in the *Yeshiva* case.¹

(2) New York City and Westchester County are joint employers with the College and therefore the College professionals employed at the four affiliated hospitals are exempt from the Board's jurisdiction under Section 2(2) of the Act.

The College further contends that if the Board decides not to dismiss the petition, it should exclude from the unit the physicians and MRI and CCHP professionals as managerial employees because they are intimately involved in the development and effectuation of College policy. In the alternative, the Board should exclude the College physicians, particularly section chiefs, division chiefs, associate chiefs, and associate directors, as supervisors within the meaning of the Act.²

The major governing body of the College is the board of trustees.³ Its chief representative is Dr.

¹ *N.L.R.B. v. Yeshiva University*, 444 U.S. 267 (1980).

² However, the parties stipulated, without prejudice to the foregoing contentions of the College, that the following classifications are managerial and/or supervisors: Dean and associate deans; department chairmen; chiefs of service and directors of service; MRI administrator, executive director, associate executive director, medical and other department directors, and principal; and CCHP director, associate director, and site administrators.

³ Although the bylaws of the College provide that four members of the faculty are to serve as nonvoting members of the board, and that faculty members are to serve as voting members of the board's committees, the record shows that in fact no faculty members serve in either capacity.

Joseph Cimino, the president and chief executive officer of the College.⁴ Dr. Cimino, who reports directly to the board and attends its meetings, is responsible for the overall supervision of the College, including its administrative and academic functions,⁵ and also monitors its financial affairs. The board is also assisted by Vice President and Chief Financial Officer Jack Cassidy who oversees the entire financial program of the College and is responsible for general administrative support services.

Dr. Samuel Rubin, the dean and provost of the College, is the chief academic officer and as such has a central role in the governance of the College.⁶ Thus, he is responsible for the supervision of the 24 departments of the College, controls their budgets, has a determining role in the evaluation, salary, selection, and discharge of the departmental chairmen and associate deans, and appoints most of the members of the key committees.

As indicated above, Dean Rubin hires as his "personal staff" a senior associate dean, who is next in the line of authority; associate deans for education and curriculum, continuing education, planning and programs, student affairs, and minority affairs; an associate dean for budgetary affairs and business with affiliated hospitals; and associate deans who represent the College at each of the affiliated hospitals and at CCHP.

The College is divided into 6 basic science and 18 clinical departments which are staffed by about 1,000 faculty members who are physicians, Ph.D.'s, or other professionals, and have the status of full professor, associate professor, assistant professor, or instructor. Of that number, about 100 are employed by the College as basic science teachers and the other 900 faculty members are paid and unpaid (voluntary) physicians and other professionals.⁷

The employees in each department are supervised by and are responsible to a chairman who as a "mini-Dean" and a "very powerful individual"

runs the department as his own "fiefdom."⁸ Although the chairman may consult with members of his department, the chairman himself works out the departmental budget with the dean, determines the activities of the department, makes teaching assignments, recruits faculty members, decides on their salary, and makes space allocations.⁹

Each Chairman of a clinical department is also responsible for "service activities" which emanate from his department. In this connection, they also designate chiefs of service to be their deputies in charge of the clinical specialties at each of the four affiliated hospitals.¹⁰

The faculty¹¹ is organized along the following lines in accordance with bylaws which were adopted in April 1974:

The Faculty Senate consists of all professors, associate professors, assistant professors, and instructors of the full-time and voluntary faculty. Its Steering Committee consists of 10 members elected by the Senate and 4 members appointed by the dean.¹²

Although the bylaws also provide for an Executive Faculty Council chaired by the dean and consisting of all 24 department chairmen and a number of other officials, the record shows that in practice it is composed only of the department chairman. The dean is also the presiding officer of the Executive Faculty, which consists of the Senate Steering Committee and the Executive Faculty Council.

According to the bylaws, the Steering Committee is to act as adviser to the dean on the academic affairs of the College, and it is empowered to "advise and agree" with the dean in the selection of faculty members for appointment to the standing faculty committees. However, Dr. Levine testified that the dean did not seek the advice and agreement of the Steering Committee with regard to committee appointments. In this connection, Dr. Levine, Dr. Joseph M. Wu, and other members of the Steering Committee met with Dean Rubin on May 6, 1980, to complain about his failure to seek the Steering Committee's advice and, according to Doctors Levine and Wu, were told by Dean Rubin that he did not agree with the bylaws because they

⁴ Dr. Cimino is also the chairman of and a professor in the Department of Community and Preventive Medicine.

⁵ The controller, assistant treasurer, the administrative officer, the acting dean of the graduate school, and special program officers, such as those at MRI, are among the officials who report to Dr. Cimino.

⁶ Dr. Rubin reports to Dr. Cimino with respect to financial matters and to the Board concerning academic matters.

⁷ A voluntary physician works at an affiliated hospital and receives no pay from the College or the City of New York or Westchester County. As indicated below, we shall not include them in the unit because they are unpaid and consequently lack an essential ingredient of employee status.

A few of the professionals working at the hospitals are jointly paid by one or more of the hospitals and the College. As indicated below, we shall include them in the unit because they are partly paid by the College and are supervised by it.

⁸ This description is based on the testimony of Dean Rubin and Dr. Gerhard Treser who is a professor of medicine.

⁹ As indicated above, the parties stipulated as to the managerial and/or supervisory status of the chairmen. Some of the larger departments such as medicine and radiology have vice chairmen and section heads.

¹⁰ In some cases, the chairman also doubles as the chief of service. The chairman of the pathology department serves not only as chief of service but also as associate dean at the Westchester Center.

¹¹ As used by Dean Rubin, the term "faculty" encompasses all teaching, nonteaching, and clinical professionals, including the classifications which were stipulated to be managerial and/or supervisory.

¹² Doctor Norman Levine, a member and secretary of the Steering Committee, testified that Dean Rubin "chose essentially" only chairmen or chiefs of service as his appointees on the committee.

were too rigid, that he was too busy to consult with the faculty concerning the committee appointments, and that the faculty should not be involved with administrative decisions and should stick to teaching, research, and providing medical service. Dean Rubin conceded in his testimony that he had expressed the view that the faculty should limit themselves to such academic matters.

The bylaws further provide, *inter alia*, for a number of principal committees which deal with significant aspects of governance:

The Education and Curriculum Committee: This committee is charged with reviewing the curriculum and teaching program of the College and recommending changes therein to the dean and faculty. The record shows that the Committee, whose members are selected by the dean, is predominantly composed of professionals who are acknowledged by stipulation to be managerial and/or supervisory. Thus, the 1978 Committee was comprised of two associate deans, seven chairmen, one chief of service, and two associate professors. In 1979, the Committee consisted of an associate dean, eight chairmen, two chiefs of service, and one associate professor.¹³

As indicated above, the Committee is responsible for the overall design of the curriculum and makes recommendations as to the time to be allocated to each department. The guidelines established by the Committee are expected to be followed by the various departments.¹⁴ The ultimate responsibility as to the hours spent on each course and what is taught within a given department rests with its chairman who may, however, take into consideration suggestions from its members.

The Committee on Faculty Tenure, Appointments, and Promotions (TAP): The bylaws provide that TAP shall review all proposed appointments to the positions of associate professor and professor, and recommend to the dean and the Executive Faculty approval or rejection of such appointments. The bylaws specify that TAP shall "initially" be selected by the dean from professors and associate professors of the full-time preclinical and clinical faculty. The record shows that by 1979 TAP was limited to tenured faculty members and consisted predominantly of department chairmen.

The record also shows that in practice the following procedure is followed with respect to hiring, promotion, and tenure:

Each chairman or chief of service recruits members for his particular department. The chairman

makes promotions from instructor to assistant professor which become effective without referral to TAP.¹⁵ However, promotions to associate professor and full professor go to the dean for approval, then to TAP which checks a candidate's credentials, and to the Executive Faculty only if Tap approves the promotion. The final step occurs upon the review and approval of the promotion by the Academic Affairs Committee of the board of trustees. Those who are promoted to full professor are usually also considered for tenure.

Search Committees: The bylaws provide that search committees shall be formed to fill vacancies in certain categories.

When the vacancy pertains to the position of chairman, the Executive Council and Steering Committee are required under the bylaws to prepare a list of names from which the dean selects a search committee.¹⁶ Members of the department involved may be asked for advice but they do not sit with the committee or participate in its deliberations when it goes into final executive session.¹⁷ Although the bylaws require that one student serve on the search committee, they do not otherwise limit its membership. However, the record shows that the various search committees consist substantially of acknowledged supervisors and/or managerial employees. Thus, for example, three of about seven members of the search committee for a chairman of the Pathology Department were an associate dean, a chairman, and a chief of service. The seven-member search committee for a chairman of the Department of Community and Preventive Medicine included at least three department chairmen. In the case of the search committee for a chairman of the Pharmacology Department, the majority of its seven members were four chairmen and an associate dean.

Once the search committee presents a list of candidates to the dean, the latter makes his own investigation and negotiates with the candidate his salary and the department budget. Since 1975, the dean's choice of chairmen had been approved by the Executive Faculty and the board of trustees.¹⁸

The bylaws further provide that the president, who is responsible for filling the position of dean, shall select a search committee consisting of three

¹³ Sometimes, the initiative as to promotions came from senior department members who suggest such action.

¹⁶ According to Dr. Norman Levine, who served as secretary of the Steering Committee, that committee was not, in the 2 years prior to the hearing, formally requested by the dean to submit a list of names for various search committees.

In this connection, Dean Rubin testified that "generally speaking" he has asked that Executive Faculty to suggest names.

¹⁷ According to Dean Rubin, it would be "self serving" to permit members of a department to pick their own leader.

¹⁸ Twelve of the incumbent chairmen are appointees of Dean Rubin.

¹³ The committee is assisted by three or four students.

¹⁴ However, if the committee's recommendations are not accepted by a department chairman, the committee may appeal to the Executive Faculty which, as noted above, is predominantly composed of managerial and/or supervisory professionals.

members each of the preclinical and clinical faculty, two members of the voluntary faculty, one alumnus, the president of the senior class, and a member of the board of trustees. Although Dean Rubin's name was submitted by a search committee, the record does not show whether the composition of the committee followed the specifications of the bylaws.

The bylaws also provide that, in the event of a vacancy in the position of president, the chairman of the board of trustees shall so notify the Steering Committee and the Executive Faculty Council, and that the board form a search committee consisting of six members of the board, two chairmen, two full-time members of the faculty who are not chairmen, two voluntary members of the faculty, and two medical students. Although there was a search committee appointed with respect to an earlier vacancy, it appears that no such committee was formed at the time Dr. Cimino, the incumbent president, was appointed to that position by the board.

The Grievance Committee: The bylaws provide that this committee shall be elected from the Faculty Senate and prohibits chairmen and members of the College administration from serving thereon. Its stated purpose is "to protect the benefits and rights, including academic freedom" of faculty members. In the 5 years preceding the hearing, the committee processed two grievances.¹⁹ In one case, the committee agreed with administration that the grievant was properly dismissed. In the other case, the committee directed Dean Rubin, who had fired a faculty member, to rehire him but Dean Rubin refused to do so.

Student Admissions Committee: The bylaws provide that this committee shall consist of six or more members who are appointed by the dean for the purpose of selecting candidates for admission or transfer to the College. The record shows that in fact 50 to 60 members of the faculty, whose managerial or supervisory status is not indicated, serve on the committee that interviews applicants. However, the dean has also appointed an Executive Admissions Committee which is comprised of the senior associate dean, two associate deans, two chairmen, a chief of service, and two line physicians. According to President Cimino, it is the Executive Admissions Committee which basically makes the final decisions as to which applicants are admitted.

Student Promotions Committees: The students are graded by the faculty on the basis of standards developed by an *ad hoc* committee of six faculty

members and two student representatives and approved by the Executive Faculty.

Promotions from 1 year to another are made by committees which determine whether a student has satisfactorily completed the course for that year. The bylaws provide that appointments to these committees shall be made by the dean upon the recommendation of the department chairmen. Associate Dean Robert Goldstein testified that "in practice" the committees are composed of chairmen but the chairmen may recommend members of their department to serve thereon.

As indicated above, the initial question to be solved is whether the members of the Employer's faculty are managerial employees under the United States Supreme Court's decision in *N.L.R.B. v. Yeshiva University, supra*. The Court defined managerial employees as those employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employer" through "taking or recommending discretionary actions that effectively control or implement employer policy." In this connection, the Court cautioned that "professors may not be excluded merely because they determine the content of their own courses, evaluate their own students and supervise their own research."

It is clear from the foregoing evidence that the professionals sought herein by the Petitioner are not managerial employees under *Yeshiva* criteria as the governance of the College rests with the board of trustees, Vice President and Chief Financial Officer Cassidy, and the acknowledged managerial employees and/or statutory supervisors; namely, the president, the dean, the associate deans, and the department chairmen. Thus, the board of trustees, which is the major governing body of the College, has as its chief representative, Dr. Cimino, the president and chief executive officer of the College, who is responsible for the overall supervision of administrative, academic, and financial matters. Cassidy oversees the financial program of the College. Dean Rubin, the chief academic officer of the College, is responsible for the supervision of all departments, controls their budgets, has a determining role in the evaluation, salary, selection, and discharge of chairmen and associate deans, and appoints most of the members of the principal committees. The chairmen, who are "mini-Deans" and "very powerful," run the departments as their own "fiefdoms."²⁰

¹⁹ Four other grievances were filed but the individuals concerned lost interest in pursuing their grievance.

²⁰ Members of each basic science department have the responsibility of grading their students. As indicated above, the Supreme Court noted in *Yeshiva* that professors may not be excluded or deemed managerial merely because they evaluate their own students.

As noted above, the bylaws provide for a Faculty Senate which elects 10 of the 14 members of its Steering Committee. Although the latter is charged with acting as adviser to the dean on academic affairs and "advising and agreeing" with him in the selection of faculty members, it appears that the dean failed to seek such advice and in May 1980 told some committee representatives that the faculty should not become involved in administrative decisions and should instead concentrate on teaching, research, and providing medical care. Although the Steering Committee is part of the Executive Faculty, which is charged by the bylaws with meeting at least four times a year to "review all policy matters and to recommend approval or rejection of all proposed appointments to the rank of Associate Professor and Professor," the department chairmen, who as members of the Executive Faculty Council serve on the Executive Faculty, constitute the great majority of the latter and are for that reason in a position to dominate its decisions. Similarly, the membership of the Search Committees and other principal committees, which are concerned with such matters as curriculum, faculty tenure, appointments and promotions, and student admissions and promotions, consist predominantly or substantially of such acknowledged managerial professionals as associate deans, chairmen, and chiefs of service. In sharp contrast, the Grievance Committee, which is elected by the Faculty Senate, is the only committee from which chairmen and members of the college administration are specifically excluded by the bylaws.

Accordingly, as we find that the faculty members sought by the Petitioner are not managerial employees within the meaning of the *Yeshiva* case, we conclude that they are not exempt from the protection of the Act.²¹

We turn now to the question whether the professionals who are employed by the College at the four affiliated hospitals come within the political subdivision exemption pursuant to Section 2(2) of the Act. It is well established²² that the test for determining the applicability thereof is whether a nongovernment employer, whose employees work at hospitals that are owned by a political entity, retains sufficient control over the terms and conditions of those employees to be capable of effective

bargaining. For reasons given below, we find that the College meets that test.

As indicated above, the College, which has affiliation agreements with New York City and Westchester county, is required thereby to provide professional services and is responsible for the supervision and direction of the medical staffs of the affiliated hospitals. As already noted, the provision of these services by the employees of the College is implemented by a network of College officials including, *inter alia*, the dean, the associate dean for affiliation affairs, associate deans who are assigned to each hospital, and the chairmen of the clinical departments. Chiefs of service are appointed by the latter and are assigned to the clinical departments of the hospitals where they direct the activities of the department and are responsible for interviewing and hiring line physicians,²³ evaluating their performance, making recommendations to the chairmen regarding salary increases and promotions, supervising patient service and teaching, setting schedules, making work assignments, taking disciplinary action, and recommending to the chairmen the discharge of unsatisfactory employees.

The hospitals, through executive directors who represent New York City and a commissioner designated by Westchester County,²⁴ have a limited role with respect to College personnel and the following functions performed by the College:

The College recruits and selects candidates for the position of chief of service and has the right to remove any of the incumbents. However, the executive director's approval is required before the candidate of the College is hired and the executive director may also object to the removal of an incumbent chief of service.²⁵

As noted above, College officials are in charge of recruiting and hiring line physicians. The medical boards of the hospitals participate in that process only to the extent that they examine an applicant's medical credentials for the purpose of deciding whether to grant him the attending privilege at a particular hospital.²⁶ Beyond that function, the medical boards have no voice in determining the terms and conditions of employment of the line physicians. Thus, they have no control over such

²¹ As in *Montefiore Hospital and Medical Center*, 261 NLRB 569 (1982), here the medical departments have less policymaking autonomy than the individual schools of Yeshiva University.

The record also shows that the professionals at MRI and CCHP participate in decisions with respect to the admission and treatment of patients at those facilities of the Employer. We find, contrary to the Employer, that these employees are not managerial because those functions are within the ambit of their duties as professionals.

²² *National Transportation Service, Inc.*, 240 NLRB 565 (1979).

²³ Subject to the approval of their medical credentials by one of the medical boards which are composed of all or most staff physicians at the hospitals.

²⁴ For convenience, the title of executive director will also be applied to the Westchester County Medical Center.

²⁵ The record shows that in a few instances the executive director has requested the College to remove certain chiefs of service. However, in one case the College resisted such a request.

²⁶ In this connection, it is noteworthy that the credentials committee at Metropolitan is composed of chiefs of service.

matters as wages, department budgets, transfers, disciplinary action, layoffs, and discharges.

The record also shows that the executive directors have minimal involvement in the hiring of line physicians which, as already noted, is the responsibility of the College. Their participation in this regard has been restricted to relatively few occasions when they asked the College to hire specific applicants for positions on the medical staff. While the authority to terminate line physicians rests essentially with the College, there was during the budget crisis of 1977 a "strong input" from the executive director of the Metropolitan Hospital in deciding on certain layoffs. In addition, affiliation agreements give the executive directors the right to request the College to remove those employees who violate their terms or whose continued services are not in the "best interests" of the hospital.²⁷

The affiliation agreements provide that salary ranges and fringe benefits of the College employees at the hospitals shall be consistent with those of medical personnel employed by New York City and Westchester County. However, the College, which is not bound by Civil Service regulations, has some flexibility in offering salaries at a level designed to attract highly qualified physicians. Similarly, the College makes its own decisions on how to allocate fringe benefits for insurance, health plans, and pensions. The scope of the College's authority in regard to salaries and benefits is enhanced by virtue of a provision in the agreements which enables the College to seek a greater payment from the city and the county in the event it has increased labor costs.

As indicated above, the chiefs of service are responsible for determining their employees' hours and work schedules and seeing to it that they maintain proper time and medical records. The executive director or his representative reviews the records, conducts sporadic time and floor checks, and brings any inadequacies or discrepancies in the records to the attention of the chief of service who takes the matter up with the physician involved. The executive director has also suggested the hiring of additional personnel and on occasion questions whether certain schedules provide the best patient coverage.²⁸

Finally, the chief of service has the authority to approve sick leave and requests for leaves of absence. However, the Health and Hospital Corporation may decide that in some cases pay for sick leave is not warranted under the terms of the affiliation agreements.

The Board in *Misericordia Hospital Medical Center*, 240 NLRB 823 (1979), which involved an affiliation agreement between Misericordia and New York City for the Lincoln Hospital,²⁹ held in reliance on *National Transportation Service, Inc.*, *supra*, that Misericordia did not share the statutory exemption of New York City. The facts in the instant case, which also involves the standard affiliation agreement, parallel those in *Misericordia*. Thus, as in that case, the basic role of the executive directors herein is to monitor the agreements for the purpose of assuring that their terms are observed by the College. Accordingly, in view of the limited role of the executive directors and the broad scope of authority exercised by the College, it is clear that the latter retains sufficient control over the terms and conditions of employment of its professionals to be capable of effective bargaining. Therefore, we shall assert jurisdiction with respect to those employees.³⁰

There remains the question whether the following classifications, which are in dispute, are supervisors as defined in the Act:

All College Physicians: The College contends that all of the physicians it employs at its facilities and the four affiliated hospitals are supervisors. We disagree as it is clear from the foregoing that they are under the direction of and are responsible to acknowledged supervisors and do not themselves possess any indicia of supervisory authority with respect to any unit employees.

Section Chiefs, Division Chiefs, Associate Chiefs or Associate Directors of Service, Department Vice Chairmen: The College contends that these classifications are supervisory. The section chiefs and division chiefs are involved in subspecialties of the various clinical departments, and the associate chiefs and directors of service assist the chiefs and directors of service respectively. An exhibit submitted by the College subsequent to the hearing lists 222 individuals who work at the hospitals in one of these categories. In addition, vice chairmen serve under some department chairmen. The evidence regarding the foregoing classifications is insufficient to show that they possess supervisory authority. Moreover, as in the case of the College physicians, a finding that they are supervisors would result in an unusually high proportion of supervisors. We shall therefore include them in the unit.

Principal Investigators: The College contends that individuals in this category are supervisors within the meaning of the Act. At the time of the hearing,

²⁷ However, there is no evidence that this provision has been invoked except at the Metropolitan Hospital in 1977.

²⁸ In one case, an executive director requested that the hours of a physician be reduced.

²⁹ Thereafter, the College replaced Misericordia as the supplier of professional services at Lincoln Hospital when it entered into an affiliation agreement with respect to that hospital.

³⁰ See also *Montefiore Hospital and Medical Center*, *supra*, 575 (1982).

there were about 86 research programs. Before a member of the faculty applies for a grant, he must, as the prospective principal investigator, establish with the appropriate department chairman the time, space, and equipment available for work on a particular research project. While the department chairman has overall responsibility for the research, the principal investigator is directly responsible for the conduct of the scientific work. Most principal investigators perform a variety of other functions, including teaching and clinical work, and they receive the same salary and benefits as other members of their department. Some are department chairmen, chiefs of service, or associate deans, and others are full, associate, or assistant professors. As those in the first three categories are acknowledged supervisors, there is no question that they do not belong in the unit. Although the other principal investigators decide which professionals are to be on the research staff, it is not clear whether this function is more than sporadic and minimal in terms of their nonsupervisory teaching and clinical work. We shall therefore permit those principal investigators who are not acknowledged supervisors to vote subject to challenge.

In view of the foregoing, we find the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All professional employees partly or wholly on the payroll of the Employer who work at the facilities listed herein for 8 or more hours per week, including physicians, PH. D's, den-

tists, registered nurses, section chiefs, division chiefs, associate chiefs of service, associate directors of service, department vice chairmen, but excluding interns, residents, employees represented by another labor organization, dean and associate deans; department chairmen; chiefs of service and directors of service; Mental Retardation Institute administrator, executive director, associate executive director, medical directors and directors of other departments, and principal; and Center for Comprehensive Health Practice director, associate director, and site administrators; and all other supervisors as defined in the Act. (The Employer's Medical School, the Graduate School of Basic Sciences, and the Mental Retardation Institute in Valhalla, New York; the Center for Comprehensive Health Practice in Manhattan, New York City; Westchester County Medical Center in Valhalla, New York; Lincoln Hospital in Bronx, New York City; Metropolitan Hospital in Manhattan, New York City; and Bird S. Coler Hospital in Queens, New York City.)³¹

[Direction of Election and *Excelsior* footnote omitted from publication.]

³¹ As indicated above, we shall also permit all principal investigators who are not chiefs of service, department chairmen, and associate deans to vote subject to challenge.